

State of Utah

Title and Escrow Commission Organizational Meeting

Meeting Information

Date September 14, 2005 Time 9:30 to 4:30 PM Place Insurance Dept., Rm 3112

Members

(x=Attendees)

Commission Members

xChairman, Joyce W. Clark, *Washington* xDarwin L. Johnson, *Wasatch*
xDavid M. Lattin, Salt Lake xGlen W. Roberts, *Utah* xR. Curt Webb, *Cache*

Department Staff

xJohn E. "Mickey" Braun, Jr. x Perri Babalis Brad Tibbitts xGerri Jones
Ass't Commissioner AG Legal Counsel Director, P&C MC Examiner

xSheila Curtis xGale Lemmon xJilene Whitby
MC Examiner AG Prosecutor PIO/Recorder

Minutes

Welcome and Introductions – Chairman, Joyce Clark

Joyce began the meeting at 9:40a.m. Tom introduced Michael Covington, who is over C.E. for the department. Since the overhead is not available, Tom will not be able to do his presentation and asked to be put on the next agenda. It was agreed.

Adoption of Minutes of Previous Meeting

Curt moved to approve the minutes without change. Darwin seconded the motion. The vote was unanimous.

Old Business

- **Review & Concur with Licensee Report**

Mickey reviewed the individual and agency licensee reports. He explained the renewal process that allows 30 day after the renewal date for an individual to renew their license before the lapse notice is mailed. Once a license is lapsed the agent or agency should cease doing business. The lapsed license can be reinstated within 366 days, after which a person would need to file for a new license. Glen moved that the reports be accepted. Darwin seconded the motion. The vote was unanimous in its favor.

- **Review Enforcement Case Report**

- Mickey reviewed the format of this report with the committee. Mickey will try to provide the information for the next meeting. Curt made a motion to approve the format and David seconded it. The vote was unanimous in favor of the motion.
- The Commission can be in charge of enforcement hearings or allow the ALJ to do it. If the latter, the Commission would concur or disagree with the penalty. Members can attend the hearings.
- Curt – When do we concur? Perri said that discussion of an individual's character or the deliberation of a case must be done during Executive Session. The vote on the outcome of the discussion must be done in Open Session.
- It was decided that the Members would get copies of signed stipulations until a webpage could be set up to provide pdf files for Members to view. During the Commission meetings the Members could discuss the cases then concur, or not, the penalty set for each case. Members do not concur with the underlining process or evidence of the case.

- Mickey referred to information given to the Members about the department's process to assess penalties. Mickey asked that this document not be shared. Joyce suggested the commission review the guidelines.
- Mickey said that the difference between penalty and forfeiture is that a penalty restricts the license and a forfeiture is a monetary penalty and does not restrict the license. Maximum penalties are in the code.
- **Description of Cases / Gale Lemon**
 - Case #1601, Shauna Lobato, an employee of a title company, provided false and misleading information about property she owned causing loss to the underwriter. Her license was revoked, no forfeiture was applied and she is prohibited from participating in insurance business. The case was referred to fraud. Curt made a **motion** to concur with the penalty. The vote was unanimous in its favor.
 - The following cases will not go to hearing unless asked for. They have filed late or not at all before the Order was issued. The standard Forfeiture is \$500 for a first offense. If a repeat offender the Forfeiture is \$1,000 with a 12-month Probation.
 - a. Case #1686, Spencer Ball, \$500 Forfeiture.
 - b. Case #1694, Premier Title, \$1,000 Forfeiture, 12 month Probation.
 - c. Case #1693, Cedar Land Title, \$1,000 Forfeiture, 12 month Probation.
 - d. Case #1691, Basin Land Title, \$500 Forfeiture.
 - e. Case #1690, Town & Country, \$2,000 Forfeiture.
 - f. Case #1689, Advantage Title Co., \$1,000 Forfeiture, no probation.
 - g. Case #1687, Sun West Title, \$500 Forfeiture.
 - h. Case #1685, NETCO Title Ins. Agency, \$500 Forfeiture.
 - i. Case #1684, Horizon Title Agency, \$500 Forfeiture.
 - j. Case #1683, Central Utah Title Incorp., \$500 Forfeiture.
 - k. Case #1695, Security Title of Davis County, \$2,000 Forfeiture, 12 month Probation.
 - l. Case #1696, Professional Title Services, \$2,500 Forfeiture, 12 month Probation.
 - m. Case #1692, First National Title Agency, Informal Adjudication; Did not appear; Forfeiture of \$1,000, 12 month Probation.
 - Probation requires payment of fine and no further violations. If an additional violation occurs then the penalty is increased. Joyce called for a Concurrence of the penalties as discussed in a. to m. above. Darwin made a **motion** to accept the penalties. David seconded the motion. The vote was unanimous in favor of the motion.
 - Case #1697, Roundy, Falsified information on a renewal application; CE. Audit discovered the falsification. Since it was a repeat violation the penalty is \$750 and the license is placed on Probation until C.E. completed through 2007. Glen made a **motion** to accept the penalty and Darwin second the motion. The vote was unanimous in favor of the motion.
 - Mickey noted that at some point the department's computer system would be programmed not to generate a renewal notice if a licensee's C.E. has not been completed. Michael said that if an individual attended an education course that was not approved, that person could give her information about the course, and if worthy, she will approve it and give the individual credit for attending.
 - Commissioner Michie suggested the Commission send a letter to the Bar Association requesting they submit their education courses for certification.
 - Curt suggested Members receive credit for attending Commission meetings.

New Business

- **ULTA's Midwinter Convention In Vegas / Joyce Clark**
 - This meeting will be held in January 2006. The organizers have asked if the Commission would participate Saturday morning as a panel or speak. They will pay for their registration and David's hotel room.

- Perri said the code prohibited Commission Members from receiving compensation for their services. They will not be in violation. Joyce will provide more information later.
- Curt suggested they hold the Title Commission meeting in Vegas. Commissioner Michie reminded them that as public servants they are held to a higher standard. Think carefully about the political ramifications. The Commission asked Commissioner Michie to let them know at the October meeting if they should have this meeting in Vegas or not.
- **Travel Reimbursement / Karen & Jane**
Jane noted the importance of having the proper forms filled out and signed by Members. Curt shared how the Real Estate Division did it with their board. He will get a sample and give it to Jane. Everyone signed a form at each meeting that already had their mileage and expenditures already on it and they were given a per diem as well. Mickey will check into this and find an easier way for the group to report their expenses and get paid. He will also check on the per diem paid above the mileage, food and boarding costs. Lunches will be paid for. Jane said that as of July 1 the gasoline reimbursement would be \$.416 per mile.
- **A Case That Will Impact 31A-23a-407, Liability of Title Insurers for Acts of Title Insurance Producers / Perri Babalis**
A matter pending in the bankruptcy court, Crocker Companies, City Title Insurance Agency and ??? Company filed bankruptcy. The debtor filed action against Crocker Company as well as Fidelity Insurance Company. Pay Dirt is saying that Fidelity should pay Crocker's debts. We need to look at the documents filed by Pay Dirt. Perri needs to know what the department, the AG's Office and ?? want her to do. She represents all three parties. The constitutionality of this statute has been heard a number of times but a precedence has not been set. In a motion for Summary Judgment a judge said it was unconstitutional. The AG's Office will just look at the constitutionality of the code and will not get involved in the issues of the case. Fidelity argues that statute violates constitution by not treating all title companies fairly. Curt made a **motion** that Perri defend the code as it stands. Darwin seconded the motion. The vote was unanimous in favor of the motion. Gerri will see if the NAIC Model will affect this section. Discuss at the next meeting.
- **Revised Rule Drafts**
 - **R592-3, Submission of Title Schedule of Escrow Charge and Marketing Information Filings / with Transmittal**
Mickey reviewed the rule. The rule sets forth the standard for filing a schedule of escrow charges. This standard is common for all filings sent to the department, except "Marketing Information." The Commission and staff reviewed the rule and a number of changes were made. Joyce made the **motion** to make changes agreed upon and start the rulemaking process. Curt seconded the motion. The vote was unanimous in favor of the motion. Joyce noted that this should be reviewed with ULTA membership at the Las Vegas Meeting.
 - **Break for Lunch 12:04p.m.**
 - **Reconvened at 12:57p.m.**
 - **R592-4, Standards for Title Escrow Charges / with Matrix and Escrow Cost Analysis**
Mickey lead the group through the discussion about the rule. A number of changes were made. If you want to enforce something then it needs to be filed with the department. Curt asked if the Commission wanted to promulgate rates and require everyone to use them? Perri referred to 31A-19a-209 that gives the Commission the right to set rates and standards by rule. Glen asked if they could set a minimum charge or rate for specific services? Perri said they could by rule. **The Commission will come to the next meeting with information about rates being charged now.** If it were done this way a matrix would not be needed. Issues were raised about commissions paid to escrow officers and their fiduciary responsibility. Mickey suggested this be discussed when they started work on the fiduciary rule. Darwin suggested the possible need for different minimum rates for each county

since each has different underlying cost for services. Curt thought a standardized rate across the board for all would be the better way to go. Glen made the **motion** to table this rule, each Member come up with a number or range that should be used, and he will go to the Liaisons Committee for their input. Members will then report findings at the October meeting and make a decision. Curt seconded the motion. The vote was unanimous in favor of the motion. Mickey will make the changes in the rule the Commission agreed upon and will have it ready for the next meeting.

- **New Language for 31A-23a-204** / Gerri Jones

The proposed new wording reads:

(1) Every title insurance agency newly licensed[~~-, merged, or acquired~~] after July 1, 2006, shall be owned or managed by [~~a full-time~~] title producer licensed with search and escrow lines of authority for at least three of the [~~four~~] five years immediately preceding the date of application.

This will be sent to the 2006 Legislative Session.

- **R592-6 (R590-136), Title Insurance Agents Annual Reports**

Gerri will prepare a proposed draft of this rule and send to the Commission, probably before the next meeting.

- **R592-5, Fiduciary and Other Responsibilities of Title Insurance Producers Providing Escrow Services as Settlement Agents** / Gerri Jones

After R590-6 this rule would be the next one to work on. When that time comes a proposed draft will be provided to the Commission.

- Glen made the **Motion** to adjourn at 2:30p.m. The vote was unanimous in favor of the motion.

Other Business from Committee Members

Next Meeting

9:30 a.m., Room 3112, State Office Building

July 13, 2005	January 11, 2006
August 10, 2005	February 8, 2006
September 14, 2005	March 8, 2006
October 12, 2005	April 12, 2006
November 9, 2005	May 10, 2006
December 14, 2005	June 14, 2006